

Franchise Tax Board**ANALYSIS OF ORIGINAL BILL**

Author: Evans Analyst: Jahna Alvarado Bill Number: AB 94
Related Bills: See Legislative History Telephone: 845-5683 Introduced Date: January 6, 2009
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Natural Heritage Preservation Tax Credit

SUMMARY

This bill would do the following:

- Reactivate the Natural Heritage Preservation Tax Credit Act within the Public Resources Code (PRC) and reestablish tax credits within the Revenue and Taxation Code (R&TC) indefinitely, and
- Allow the Wildlife Conservation Board (WCB) to award the Natural Heritage Preservation (NHP) tax credit without monetary limit, as specified.

This analysis addresses only the provisions in the bill that would impact the Franchise Tax Board (FTB).

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to save state and local agencies' funds when they acquire property from donors who are awarded the NHP tax credit.

EFFECTIVE/OPERATIVE DATE

This bill would become effective January 1, 2010, and would apply to taxable years beginning on or after that date.

POSITION

Pending.

ANALYSIS**STATE LAW**

Under the PRC, the Natural Heritage Preservation Tax Credit Act of 2000 was established to encourage donations of land to the state, local governments, and designated nonprofit organizations. The donated property must be approved for acceptance by the WCB, which notifies FTB of the amount of tax credit awarded for each donation.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director

Date

Selvi Stanislaus

03/10/09

Under the PRC, the WCB had the authority to award no more than a total of \$100 million in NHP tax credits beginning with fiscal year 2000-01. The WCB's authority to award credits sunset by its own terms on June 30, 2008.

Under the R&TC, a taxpayer is allowed an income tax credit of up to 55% of the donated property's fair market value for donations made on or after January 1, 2000, and before July 1, 2008. Any unused credit may be carried over for eight years. The FTB is required to report the amount of NHP credit claimed by tax year to the WCB.

Within 60 days of notification from FTB, the WCB is required to reimburse the Natural Heritage Preservation Tax Credit Reimbursement Account within the state's General Fund (GF) for the amount of the NHP tax credits claimed on income tax returns. The WCB is authorized to use bond funds to reimburse the GF.

Under current state law, Corporation Tax Law allows the assignment of certain credits to taxpayers that are members of a combined reporting group and adds the following provisions:

- Provides that an "eligible credit" may be assigned by a taxpayer to an "eligible assignee."
 - "Eligible credit" means any credit earned by a taxpayer in a taxable year beginning on or after July 1, 2008, or any credit earned in any taxable year beginning before July 1, 2008, which is eligible to be carried forward to the taxpayer's first taxable year beginning on or after July 1, 2008.
 - "Eligible assignee" means any "affiliated corporation" that is a member of a combined reporting group at certain specified times.
 - "Affiliated corporation" means a corporation that is a member of a combined reporting group.
- Provides that the election to assign any credit is irrevocable once made and is required to be made on the taxpayer's original return for the taxable year in which the assignment is made.

THIS BILL

This bill would reinstate the NHP tax credits for qualified donations of real property or perpetual interests in real property made in taxable years beginning on or after January 1, 2010 and would allow the WCB to award the NHP tax credits indefinitely and with no limit on the total credit amount awarded.

The award of the NHP tax credits would be contingent on the GF being reimbursed by the WCB for all lost revenue resulting from the award of the NHP tax credits.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department.

LEGISLATIVE HISTORY

AB 1452 (Committee on Budget, Stats. 2008, Ch. 763), allows a corporate taxpayer that is a member of a combined reporting group to make a one time, irrevocable assignment of business tax credits to taxpayers within that group. Assigned credits must have been earned during a taxable year beginning on or after July 1, 2008, or eligible for carryover to the taxpayer's first taxable year beginning on or after July 1, 2008. Assigned credits can only be applied to reduce a tax liability in taxable years beginning on or after January 1, 2010.

AB 2930 (Laird, 2007-08) would have eliminated the sunset date of the NHP, removed the \$100 million limit on the total credit the NHP could award, and required local governments to transfer funds to the WCB prior to receiving final approval for acceptance of a qualified donation. AB 2930 was held in the Senate Appropriations Committee.

SB 1100 (Sen. Budget Committee, Stats. 2004, Ch. 226) extended the period in which the NHP tax credits may be awarded and claimed from fiscal year 2004-05 to 2007-08.

AB 2722 (Laird, Stats. 2004, Ch. 715) allowed the WCB to use bond funds to reimburse the GF for lost revenue resulting from the award of the NHP tax credits.

SB 1647 (O'Connell, Stats. 2000, Ch. 113) established the Natural Heritage Preservation Tax Credit Act of 2000.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws. With the exception of *New York*, none of these states have a credit comparable to the credit allowed by this bill.

New York's credit for conservation easement donations is limited to 25% of the property taxes associated with the land. The credit for any year may not exceed \$5,000 and may not reduce the fixed dollar minimum tax or the tax on the minimum taxable income base. Any unused credit may be refunded or applied as a payment against the following year's tax due. The conservation easement must be filed with the New York State Department of Environmental Conservation to claim the credit.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Tax Revenue Estimate:

This bill would result in the following revenue impact under the Personal Income Tax and Corporation Tax laws:

Estimated Revenue Impact of AB 94 Effective For Tax Years Beginning On Or After January 1, 2010 Enactment Assumed After June 30, 2009 (\$ in Millions)			
	2010-11	2011-12	2012-13
Applied Tax Credits	-\$7	-\$7	-\$7
Local Gov't payments	+\$3	+\$3	+\$3
WCB transfers	+\$4	+\$4	+\$4
Impact to General Fund	\$0	\$0	\$0

This estimate does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

Revenue Discussion:

The revenue impact of this bill is dependent on the fair market value of land donated for tax credits, and the amount of credits that can be applied to reduce tax liabilities.

The WCB reports that \$48.6 million in tax credits were allocated before the credit sunset on June 30, 2008. Actual credits applied on tax returns totaled \$25.8 million for the period of 2001-02 through 2007-08, an average of approximately \$4 million annually.

This bill would allow local governments to bring completed applications to the WCB for approval of the credit. It is anticipated that this change would result in more credits being awarded, approximately \$7 million annually. This bill would be effective for tax years beginning on or after January 1, 2010.

Tax credits applied in 2010 would be reported on tax returns filed in 2011. FTB would not be able to request a fund transfer to cover these credits until sometime after the return is filed. At the earliest, the transfers would be made in April 2011 (in the 2010-11 fiscal year) or October 2011 (in the 2011-12 fiscal year). Therefore, there would be no impact in the 2009-10 fiscal year for credits generated in 2010.

The FTB must report to the WCB the tax year for which the NHP tax credit was applied by the taxpayer. Transfers from the WCB fund, based on actual credit usage, would amount to \$4 million in 2010-11 and in 2011-12 on an accrued basis.

Payments by local governments are made “up front,” in the same fiscal year as the credit is reported. It is estimated that these payments would be approximately \$3 million each in 2010-11 and 2011-12.

LEGISLATIVE STAFF CONTACT

Legislative Analyst
Jahna Alvarado
(916) 845-5683
Jahna.Alvarado@ftb.ca.gov

Revenue Director
Jay Chamberlain
(916) 845-3375
Jay.Chamberlain@ftb.ca.gov

Asst. Legislative Director
Patrice Gau-Johnson
(916) 845-5521
Patrice.Gau-Johnson@ftb.ca.gov